IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 93 of 2006
Date of decision 4 .5.2007

Commissioner, Central Excise, Jalandhar, HQRS. at Chandigarh
.. Appellant

Versus

M/s Punjab Castings (P) Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE ARVIND KUMAR

PRESENT: Mr.Sanjiv Kaushik, Advocate for the Appellant
Mr. Sudhir Malhotra, Advocate for the assessee.

M.M.Kumar, J.

The instant appeal has been filed by the revenue under Section 35 G of the Central Excise Act,1944 challenging the order dated 15.6.2005 (Annexure A/3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in E/Stay/1053/05 NB(S) in Appeal No. E/1443/05 NB (S). It has been claimed that the following substantial question of law have arisen from the afore-mentioned order:

" i) Whether the Tribunal can go into the merits of the case in appeal under Section 35B (b) of the Act when the Commissioner (Appeals) has dismissed the case on account of default in payment of pre-deposit under Section 35 F of the Act and passed no order under Section 35A of the Act.

ii) Whether the CESTAT was right in going into the merits of the case when the Tribunal themselves has been remanding such cases back to the Commissioner (Appeals)?"

The undisputed facts are that the assessee M/s Punjab Castings

(P) Ltd., Jalandhar have been availing the facility of Cenvat Credit under Rule 3 of the Cenvat Credit Rules, 2002 (for brevity 'the Cenvat Rules'). In respect of the purchases made in the month of July, 2002, the assessee filed his monthly return and on scrutiny it was found that the assessee had purchased 100 MT of Silicon Coil Defective/ Solico used Steel Scraps as inputs from M/s BR Industries, New Delhi. The value of the transaction under Section 4 of the Central Excise Act, 1944 (for brevity 'the Act') as declared by the dealer was Rs. 5,00,000/- and at the rate of 16 percent Central Excise Duty was leviable which was calculated at Rs. 80,000/-. The supplier however has charged the central excise duty amounting to Rs.1,96,732-00 which was found to be against the provisions of Section 4 (1)(a) of the Act and Rule 3(4) of the Cenvat Rules. The excess amount claimed as duty by the assessee was without authority of law and was deposited with the Central Government. It was alleged that the assessee had wrongly taken the credit of the whole amount in the Cenvat credit account which was recoverable from them under Rule 12 of the Cenvat Rules. In that regard a show cause notice was issued to the respondents for recovery of Cenvat Credit amounting to Rs. 1,16,732-00 under Rule 12 of the Cenvat Rules. The Assistant Commissioner, Central Excise Division No. 1, Jalandhar vide his order in original dated 15.9.2004 has confirmed the demand of recovery of Rs. 1,16,732.00 alongwith interest under Section 11AB and penalty of Rs. 20,000-00 under Rule 13 of the Cenvat Credit Rules. Alongwith an appeal filed by the assessee, an application for staying the recovery was also filed. The appeal of the assessee was dismissed by the Commissioner (Appeals) under Section 35 of the Act. Consequently, the assessee approached the CESTAT. The CESTAT vide its order dated

15.6.2005 allowed the application for stay without imposing any condition of pre-deposit and dismissed the appeal by observing as under:

> " I have heard both sides. The plea of the Revenue is that, at the time of clearance of the inputs as such by the manufacturer, he was required to pay the duty at the assessable value of the goods. The appellants are not entitled to take credit of any amount more than that. But this plea cannot be accepted. At the time of clearance of the goods, the manufacturer has charged duty on the inputs cleared by him, of the disputed amount from the appellants. The appellants, therefore, on the strength of the duty paid invoices are entitled to take credit accordingly in view of the Board's circular No. 766/82/2003/C dated 15.12.2003 being bonafide purchaser of the goods. Therefore, the impugned order is set aside and the appeal of the appellants is allowed with consequential relief, if any as per law."

The revenue has challenged the afore-mentioned order on the ground that the Tribunal should have decided the stay application alone by dispensing with the requirement of pre-deposit and it should have remanded the matter back to the Commissioner (Appeals) without deciding the controversy on merits.

We have heard the learned counsel for the parties at some length and find that there is no ground to interfere with the view taken by the Tribunal. It is undisputed that at the time of clearance of goods the manufacturer had charged duty on the inputs cleared by him and, therefore, the assessee on that basis was entitled to take credit alongwith the duty paid invoices. In that regard, the Tribunal has placed reliance on the Board's

circular No. 766/82/2003-CX dated 15.12.2003 being bona-fide purchaser of the goods . Merely because the Tribunal has decided the issue on merits would not constitute a sufficient ground for us to take a view that the case should have been remanded back to the Commissioner (Appeals). No illegality in the view taken by the Tribunal on merits of the case has been pointed out which may warrant interference of this Court. Therefore, we do not find that any substantial question of law as claimed by the revenue would arise for our determination.

In view of the above, the appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Arvind Kumar)
Judge

4 .5.2007
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